



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2015-0793; FRL-9946-58-Region 9]

Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; Infrastructure Requirements to Address Interstate Transport for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving in part and disapproving in part State Implementation Plan (SIP) revisions submitted by the Arizona Department of Environmental Quality to address the interstate transport requirements of Clean Air Act (CAA or Act) section 110(a)(2)(D)(i) with respect to the 2008 ozone national ambient air quality standard (NAAQS). We are approving the portion of the Arizona SIP pertaining to significant contribution to nonattainment or interference with maintenance in another state and disapproving the portion of Arizona's SIP pertaining to interstate transport visibility requirements. Where EPA is disapproving a portion of the Arizona SIP revision, the deficiencies have already been addressed by a federal implementation plan (FIP).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established docket number EPA-R09-OAR-2015-0793 for this action.

Generally, documents in the docket for this action are available electronically at

<http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San

Francisco, California 94105-3901. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 972-3856, *kelly.thomasp@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms “we,” “us,” and “our” refer to EPA.

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I. Background

CAA sections 110(a)(1) and (2) require states to address basic SIP requirements to implement, maintain and enforce the NAAQS no later than three years after the promulgation of a new or revised standard. Section 110(a)(2) outlines the specific requirements that each state is required to address in this SIP submission that collectively constitute the "infrastructure" of a state's air quality management program. SIP submittals that address these requirements are

referred to as “infrastructure SIPs” (I-SIP). In particular, CAA section 110(a)(2)(D)(i)(I) requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will “contribute significantly to nonattainment” (prong 1) or “interfere with maintenance” (prong 2) of the applicable air quality standard in any other state. CAA section 110(a)(2)(D)(i)(II) requires SIP provisions that prevent interference with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). This action addresses the section 110(a)(2)(D)(i) requirements of prongs 1, 2 and 4 with respect to Arizona’s I-SIP submissions.

On March 27, 2008, EPA issued a revised NAAQS for ozone.¹ This action triggered a requirement for states to submit an I-SIP to address the applicable requirements of section 110(a)(2) within three years of issuance of the revised NAAQS. On December 27, 2012, the Arizona Department of Environmental Quality (ADEQ) submitted its 2008 ozone NAAQS I-SIP. On December 3, 2015, ADEQ submitted a supplement to the 2012 submittal further addressing 110(a)(2)(D)(i) prongs 1, 2, and 4.²

On July 14, 2015, EPA partially approved and partially disapproved Arizona’s 2012 submittal for the 2008 ozone NAAQS for the I-SIP elements C, D, J, and K. EPA partially approved and partially disapproved the submittal for purposes of 110(a)(2)(D)(i)(II) prong 3 and partially approved and partially disapproved the submittal for purposes of 110(a)(2)(D)(ii)

¹ National Ambient Air Quality Standards for Ozone; Final Rule, 73 FR 16436 (March 27, 2008).

² “Arizona State Implementation Plan Revisions for 2008 Ozone and 2010 Nitrogen Dioxide Under Clean Air Act Section 110(a)(2)(D). . .” Signed December 3, 2015. Also see email from Heidi Haggerty of ADEQ: AZ 2015 Ozone Transport I-SIP Submittal Clarification. Sent December 9, 2015.

(relating to CAA sections 115 and 126).³ We subsequently took action on I-SIP elements A, B, E-H, L, and M for the 2008 ozone NAAQS on August 10, 2015.⁴ We also stated our intention to propose action on the I-SIP submittal for the 2008 ozone NAAQS 110(a)(2)(D)(i) prongs 1, 2, and 4 in an additional action.⁵ Additionally, pursuant to a judgment issued by the Northern District of California in *Sierra Club vs. McCarthy*, EPA must take final action on 110(a)(2)(D) prongs 1, 2, and 4 of Arizona's December 2012 SIP revision by June 7, 2016.⁶

On March 22, 2016, EPA proposed to approve in part, and disapprove in part, the 2012 and 2015 SIP revisions addressing the infrastructure requirements of CAA section 110(a)(2)(D)(i) for the 2008 ozone NAAQS.⁷ The rationale supporting EPA's actions is explained in our proposal notice and the associated TSD and will not be restated here. The proposed rule and TSD are available online at <http://www.regulations.gov>, Docket ID number EPA-R09-OAR-2015-0793.

II. Public Comments

EPA received no comments on the proposed action during the public comment period.

III. Final Action

Under CAA section 110(k)(3), and based on the evaluation and rationale presented in the proposed rule, the related TSD, and this final rule, EPA is approving in part and disapproving in part Arizona SIP revisions addressing the interstate transport requirements of CAA section

³ Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; Infrastructure Requirements for Lead and Ozone. 80 FR 40905 (July 14, 2015).

⁴ Approval and Promulgation of State Implementation Plans; Arizona; Infrastructure Requirements for the 2008 Lead (Pb) and the 2008 8-Hour Ozone National Ambient Air Quality Standards (NAAQS). 80 FR 47859 (August 10, 2015).

⁵ *Id.*

⁶ Judgment, *Sierra Club v. McCarthy*, Case 4:14-cv-05091-YGR (N.D. Cal. May 15, 2015).

⁷ Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; Infrastructure Requirements to Address Interstate Transport for the 2008 Ozone NAAQS. 81 FR 1520. (March 22, 2016).

110(a)(2)(D) with respect to the 2008 ozone NAAQS.

EPA is approving Arizona's SIP as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) prongs 1 and 2 for the 2008 ozone NAAQS. EPA is disapproving Arizona's SIP with respect to the interstate transport requirements of CAA section 110(a)(2)(D)(i)(II) prong 4 for the 2008 ozone NAAQS. However, because EPA has issued Regional Haze FIPs addressing visibility requirements in Arizona, no additional FIP obligation is triggered by the disapproval of this portion of Arizona's infrastructure SIP. EPA will continue to work with Arizona to incorporate emission limits to address the requirements of the Regional Haze Rule into the state SIP.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days after the date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Approval and promulgation of implementation plans, Incorporation by reference, Oxides of nitrogen, Ozone, and Volatile organic compounds.

Dated: May 6, 2016.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

[FR Doc. 2016-11744 Filed: 5/18/2016 8:45 am; Publication Date: 5/19/2016]